

Application No.: 10/659,869
Docket No.: BB1294USCNT

Page 4

REMARKS

Claims 1-16 and 18-20 have been previously canceled. Claims 17, 21-29 are now pending, with Claim 17 being the sole independent claim.

Claims 17-29 were rejected under 35 U.S.C. §112, first paragraph for the sole reason that the claims "[do] not reasonably provide enablement for the complements or the antisense to all nucleotide sequences encoding polypeptides having at least 95% sequence identity to SEQ ID NO:36 and their uses in a transgenic plant." Additionally, the Office Action indicates that the "complement of a nucleotide sequence implies antisense inhibition activity by said nucleotide sequence."

Enablement under §112, first paragraph is discussed in MPEP §2164.08 as being required to be commensurate in scope with the claims. Further, this section provides that "the only relevant concern should be whether the scope of enablement provided to one skilled in the art by the disclosure is commensurate with the scope of protection sought by the claims." Citing *AK Steel Corp. v. Sollac*, 344 F.3d 1234, 1244, 68 USPQ2d 1280, 1287 (Fed. Cir. 2003).

One of ordinary skill is fully aware that the full-length complement as indicated in claim 17, part (b), provides the template upon which RNA polymerase produces mRNA containing the nucleotide sequence of claim 17, part (a), i.e., a nucleotide sequence encoding a polypeptide having Myb-related transcription factor activity, wherein the polypeptide has an amino acid sequence of at least 95% sequence identity to SEQ ID NO:36. Claim 17, part (b), is directed to a "full-length complement" and is **not** directed to a full-length complement having **antisense inhibition activity**. Under this proper view of the scope of the pending claims, the full-length complements of the nucleotide sequence described in claim 17, part (a) are enabled by the specification.

The Office Action further indicates that "neither declaration nor the instant specification provides any evidence that suggests complements of all nucleotide sequences encoding polypeptides having 95% sequence identity would alter anthocyanin production pathways."

As the above-arguments would suggest to one of ordinary skill, the full-length complement as indicated in claim 17, part (b), by functioning as a template for production of mRNA that would produce a polypeptide having Myb-related transcription factor activity (as does the encoding nucleotide of claim 17, part (a)) and

Application No.: 10/659,869
Docket No.: BB1294USCNT

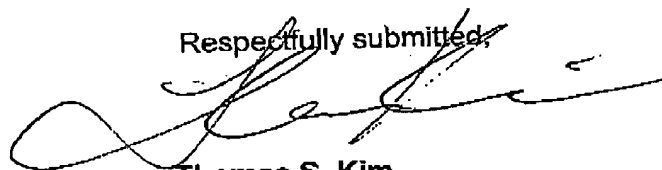
Page 5

thereby result in an alteration of anthocyanin production. It is respectfully submitted that in view of the foregoing, the specification does enable one of skill in the art to practice the claimed invention. Accordingly, withdrawal of the rejection of claims under 35 U.S.C. §112, first paragraph, as failing to meet the enablement requirement is respectfully requested.

In light of the foregoing, it is respectfully submitted that the claims are in condition for allowance and such allowance is respectfully requested.

Please charge any fees or credit any overpayment of fees, which are required in connection herewith to Deposit Account No. 04-1928 (E.I. du Pont de Nemours and Company).

Respectfully submitted,



Thomas S. Kim
ATTORNEY FOR APPLICANTS
REGISTRATION NO. 51,009
TELEPHONE: 302-992-4061
FACSIMILE: 302-892-1026

Dated: 10/17/06